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# In the Supreme Court of the United States

**October Term, 1984**

HAMPTON ROADS SHIPPING ASSOCIATION,

Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, LOCAL 846,
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, LOCAL 970,
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, LOCAL 1248,
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

## CROSS-PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

Assuming this Court grants the Respondents' request for grant of writ of certiorari, the questions which Petitioner believes to be before the Court are as follows:

1. After Union locals have voluntarily entered into a local collective bargaining agreement which has been assented to by the international, which provides for disputes resolutions on a local level through binding arbitration and which agreement includes a "no strike" clause, may the union disregard such obligation and strike because of what it claims to be an "arbitration" decision reached under a separate national agreement where the local employer has not been a party and where there was a total lack of procedural due process?
2. Did the District Court have jurisdiction under *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970), to restrain a work stoppage when a union has received an arbitration award under a highly disputed "arbitration" which is being litigated by the parties, where there has been no judicial enforcement and where there was a total failure to follow the procedures and local arbitration requirements of a local contract prior to engaging in such work stoppage?

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, the Hampton Roads Shipping Association (hereinafter the HRSA), by counsel, prays that should this Court issue a writ of certiorari sought by Respondents herein (hereinafter the ILA or the Union) to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above-styled case on October 23, 1984, then, this Court also should grant HRSA's Cross-Petition with respect to the issues set forth herein.

## OPINION BELOW

The ILA has properly cited and included in its Appendix to its Petition for Certiorari (hereinafter cited as Pet. App.) the decisions of the Court of Appeals for the Fourth Circuit and the District Court, and such decisions and citations will not be

repeated here or attached to this Cross-Petition or to HRSA's Appendix to its Brief in Opposition to Petition for a Writ of Certiorari (hereinafter cited as Res. App.).

## JURISDICTION

The HRSA asserts the jurisdictional basis alleged in the Petition for Certiorari and files this Cross-Petition pursuant to 28 U.S.C. §1254(1) and pursuant to procedures set forth in Rule 19.5 of the Revised Rules of the Supreme Court of the United States. The HRSA received the petition for certiorari in connection with which this cross-petition is filed on February 19, 1985.

## STATUTE INVOLVED

The HRSA accepts the citation by the ILA of the statute involved and agrees that this Court's interpretation of the statute under *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1979), and its progeny is controlling.

## STATEMENT OF THE CASE

In early August 1984, the ILA and its Virginia local unions selectively engaged in a series of work stoppages or strikes in the Hampton Roads area terminals. The work stoppages stemmed from a dispute over the utilization of members of container gangs as drivers. The utilization of members within the gang was the subject of locally negotiated contracts between the ILA and its Virginia locals and the HRSA which contrats had been approved by the ILA. The District Court found that since at least 1977 utilization has been a local matter, and that the utilization of gang members is different in each of the East and Gulf Ports pursuant to their separate local collective bargaining agreements. The District Court found that the ILA and its locals failed to comply with their local collective bargaining agreements which required them to arbitrate disputes rather than to strike or to engage in work stoppages, and entered a preliminary injunction barring the ILA from such action pending resolution of the dispute pursuant to procedures under the local collective bargaining agreements.

The ILA appealed to the Court of Appeals for the Fourth Circuit alleging that the dispute was one to be properly arbitrated pursuant to the ILA Master Contract and before the Management-ILA Emergency Hearing Panel (EHP). The EHP is a national panel made up of representatives of management and labor who are authorized to attempt to resolve issues involving the master containerization agreement which cannot be resolved on a local basis. The ILA further contended that the EHP had, in fact, previously arbitrated the dispute in question on June 12, 1984, and that accordingly the Union could strike to enforce the "arbitration award" of the EHP in its favor.[1] The Court of Appeals for the Fourth Circuit noted in its opinion that the parties were currently involved in arbitration and judicial proceedings before the EHP, the United States District Court for the Southern District of New York, and in the Court of Appeals for the Second District, and accordingly found that "the district court's order for local arbitration was unnecessary." Pet. App. at 6. The Court of Appeals, however, upheld the District Court's finding of irreparable injury and public interest, and affirmed the grant of a preliminary injunction noting that:

> As long as the Shipping Association [HRSA] seeks to resolve the dispute through the Council in arbitration and judicial proceedings, it is entitled to enforcement of the union's obligation not to strike.

*Id.* at 6a. The case was remanded to the District Court for modification of its preliminary injunction to bring it in conformity with the Court of Appeals opinion.

## REASONS FOR GRANTING THE CROSS-PETITION

1. ***Should the Union's petition for writ of certiorari be granted, the cross-petition involves important questions of national labor law and policy concerning the relationship between***

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1 The union concedes that the EHP decision was "not strictly speaking, an arbitration award." Petition for Writ, 4 fn.5.

***international unions and their affiliated locals and their respective collective bargaining agreements and duties thereunder.***

As noted in the Statement of the Case above, the District Court found that the Union locals had entered into a collective bargaining agreement with the HRSA which included an arbitration clause and dispute resolution procedures as well as a "no strike" clause. see Pet. App. A at 3a; Pet. App. B at 14a-15a. The District Court found that the local collective bargaining agreement was "on a par with all other ILA contracts affecting the Hampton Roads Shipping Association." Pet. App. B at 22a. The District Court compared the arbitration clauses under both the local and international agreements, and concluded that "neither type of arbitration is superior to the other." Pet. App. B at 22a. The District Court found that the grievance was essentially a local issue involving utilization of gang members and as such the union was required to arbitrate on a local level. Because they failed to do so, the work stoppage prior to local arbitration was enjoined. Pet. App. B at 25a, 28a.

The Court of Appeals for the Fourth Circuit correctly affirmed the grant of a preliminary injunction enjoining a violation of the contract's "no strike" clause by the union. The Circuit Court did not decide the issue of whether the nature of the dispute be local or regional, but reserved that question noting that:

> [T]he district court's order for local arbitration is unnecessary. We perceive no reason why essentially the same issues should be arbitrated and litigated simultaneously on both regional and local levels.

Pet. App. A at 6a. It is this finding which we believe presents an important issue of national labor law and policy.

National Labor law and policy has as its cornerstone the goal of "removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes..." National Labor Relations Act, 29 U.S.C. §151. The underlying principle is that the parties should be permitted and encouraged to follow "the Congressional policy favoring the voluntary establishment of a

mechanism for the peaceful resolution of labor disputes." *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235, 253 (1970). Because such a policy requires judicial enforcement of arbitration proceedings and of "no strike" clauses, the *Boys Market* exception to the anti-injunction prohibition contained in § 4(a) of the Norris-LaGuardia Act, 29, U.S.C. § 104(a), was postulated by the Court. *See Boys Market*, 398 U.S. at 253. This rule should and must be applied to all collective bargaining agreements regardless of whether they are negotiated on national, regional, or local levels.

It is not the function of the Courts of Appeals to reform collective bargaining agreements which have been negotiated between labor and management. The ILA and its locals and the employer associations, including the HRSA, specifically negotiated, signed and approved separate collective bargaining agreements. These agreements included separate and significantly different local and master contract arbitration and grievance procedures. While the Fourth Circuit Court of Appeals may have felt that duplicative arbitration was "unnecessary" or even wasteful, the parties bargained for and consented to a separate and distinct arbitration procedure. Although the reasons for the duplicative process may not be clear to the reviewing court, the intent of the parties to incorporate such a procedure cannot be questioned. It is in the best interest of national labor policy that such a clearly expressed intent be enforced and that such arbitration proceedings be required on a local level if the local contract calls for such a proceeding. Failure to do so defeats the intent of the collective bargaining process and may result in industrial strife which Congress sought to prevent by passage of the National Labor Relations Act.

Thus, in the event that this Court grant the Union's petition for writ of certiorari, we believe that consideration of the important national labor question of the relationship between local and regional or national collective bargaining agreements is one which is appropriate for this Court's consideration. We believe the the *Boys Market* rationale mandates that all agreements to arbitrate be enforced even if arguably duplicative.

2. ***Should the Union's petition for writ of certiorari be granted, the cross-petition involves a dispute between the interpretation of local and international collective bargaining agreements which have been decided differently by federal courts which have considered the question.***

As noted above, the District Court and Circuit Court below have decided the issue of arbitrability of regional or master contracts as opposed to local contract arbitration in a different manner. Standing alone, this is primarily a mixed question of fact and law which probably would not be of the significance to warrant review by this Court. However, in view of the pending cases in the Fifth and Second Circuit Courts of Appeals which deal with the same issues, this factual issue may prove to be worthy of this Court's consideration. In the event that this Court does not grant a wirt of certiorari, a position which HRSA opposes primarily on a theory that the matter is not yet ripe for Supreme Court review, then the Court will be faced not only with different judicial opinions, but different local agreements which pervade the fact situation in each individual case.[2] In order to best interpret the alleged conflict in the circuits, the Court must first consider the difference in the local collective bargaining agreements and weigh those differences against the allegation of alleged conflict in treatment of the different parties. To do so, we believe that it is necessary for the Court to consider the Hampton Roads local collective bargaining agreement and the arbitration procedure included therein, and

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2 The pending cases in the Second Circuit and the Fifth Circuit Court of Appeals involve a dispute which was arbitrated by the West Gulf Maritime Association with a local collective bargaining agreement in effect for employers in ports from Lake Charles, Louisiana to Brownsville, Texas. *See* Petition for Writ of Cert. at 4 fn.6; *West Gulf Maritime Association v. ILA Deep Sea Local 24*, 751 F.2d 721 (5th Cir. 1985); *ILA v. West Gulf Maritime Ass'n*, Civ. 9080 (LBS) (S.D.N.Y. Feb. 19, 1985); *appeal filed*, 85 Civ. 7136 (2nd Cir. filed Mar. 1, 1985). The instant case involves a local collective bargaining agreement which is restricted to Hampton Roads and to which the West Gulf Maritime Association is not a party.

not simply disregard it as "unnecessary" as did the Court of Appeals for the Fourth Circuit.

Accordingly, should the Court grant the Union's writ of certiorari on the basis of the Union's alleged "conflict in the circuits," then the Court may properly reconsider the underlying factual and legal findings of the Fourth Circuit Court of Appeals. The local collective bargaining agreements are an essential part of that consideration, and review of the Circuit Courts' interpretation of the interplay between that local agreement and the regional agreement may well eliminate the conflict alleged by the Union, or provide a basis for the most consistent interpretation of the existing law of this Court with respect to labor arbitrations and injunctions thereunder.

## CONCLUSION

For the foregoing reasons, HRSA prays that should this Court issue the writ for certiorari requested by the Union and opposed by HRSA, then the Court also should consider the Cross-Petition requested by HRSA to review the judgment and decision of the United States Court of Appeals for the Fourth Circuit with respect to its finding that local collective bargaining agreement was "unnecessary."

Dated: March 13, 1985

Respectfully submitted,

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